IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4950 of 2005
With
SPECIAL CIVIL APPLICATION No. 5041 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEHSANA JILLA MADHUSTHA SAHAKARI BANK LTD. - Petitioner(s)
Versus
MERCHANT CO-OPERATIVE CREDIT SOCIETY LTD. & 1 - Respondent(s)

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Appearance :
SCA NO.4950 OF 2005
MR PRAKASH K JANI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 – 2.

SCA No.5041 of 2005
MR PRAKASH K JANI for the petitioners
M/s.Thakker Associates for respondent No.1
MR PR Nanavati for respondent No.6
Rule served to respondent Nos.2 to 5 & 7.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 11/07/2006

ORAL JUDGMENT

1. These petitions raising similar questions have been filed by a common petitioner, viz. the Mehsana Jilla Madhyastha Sahakari Bank Limited. Respondent No.2 in Special Civil Application No.4950 of 2005 and all the respondents in Special Civil Application No.5041 of 2005 are facing a summary suit filed by the petitioner Bank before the Board of Nominees. To permit these respondents to defend themselves, the Board of Nominees had put a condition, namely, of depositing Rs.9 lacs by each respondent within the stipulated time. This order came to be challenged by the respondents before the Cooperative Tribunal. The Cooperative Tribunal by its impugned order dated 17th December, 2004 modified the condition imposed by the Board of Nominees. In so far as these individuals, i.e. respondents are concerned, the condition was that each one should deposit an amount of Rs.1 lac with the Bank by 14th March 2005. So far as the principal debtor society is concerned, the condition was modified and requirement was

enhanced to that of depositing of Rs.17 lacs within the same time.

2. The plaintiff bank has, therefore, filed these petitions challenging the condition imposed by the Tribunal by which the earlier rigours imposed by the Board of Nominees came to be substantially relaxed.

3. I have heard the learned advocates appearing for the parties. It is not in dispute that the suit is filed by the Bank for a substantial sum of money and the suit amount itself is in excess of Rs.2 crores. Learned advocate Shri Jani for the petitioner further pointed out that the principal borrower i.e. the society itself is under liquidation and enhancement of the condition of deposit of Rs.17 lacs by the society is therefore of no consequence.

4. Considering the totality of the facts and circumstances of the case, I find that though it may not be possible to restore the order passed by the Board of Nominees, the order passed by the Tribunal requires modification.

5. The condition of depositing of Rs.1 lac per

person against suit amount of more than Rs.2 cores is too lenient and liberal condition in the facts of the present case. Considering all these aspects of the matter, it is directed that respondent No.2 in Special Civil Application No.4950 of 2005 and all the respondents in Special Civil Application No.5041 of 2005 shall be liberty to defend themselves in summary suit on the condition that each one of them deposits with the Bank a sum of Rs.3 lacs (three lacs) within a period of three months from today. On fulfillment of the said condition, the said respondents shall have leave to defend the summary suit. Upon receipt of the said amount by the Bank, the Board of Nominees may give priority consideration to the suit.

6. In view of the above directions, the petitions are allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

Direct service to the respondents permitted.

(Akil Kureshi, J.)

(vjn)